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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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H4

MAR 26 2004

FILE:

Office: SAN ANTONIO, TX

Date:

IN RE:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiefmann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Interim District Director for Services, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States during 1978 without inspection by an immigration officer. On March 19, 1992, the applicant was removed from the United States pursuant to section 241(a)(1)(B) of the Act. The applicant married a native of Mexico on April 18, 1987. The applicant's spouse became a naturalized citizen of the United States on August 13, 1999. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to remain in the United States with his wife and children, who are a legal permanent resident and U.S. citizens.

The interim district director determined that the evidence of record failed to establish that the application warranted a favorable exercise of the Attorney General [now Secretary of Homeland Security (Secretary)]'s discretion. The application was denied accordingly. See Decision of the Interim District Director, dated May 12, 2003.

On appeal, counsel submits additional evidence to include a police clearance letter from the City of San Antonio Police Department; an affidavit of the applicant; a copy of the marriage license for the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse; a copy of the resident alien card issued to the applicant's daughter; copies of the U.S. birth certificates of the applicant's two sons; a copy of the high school diploma of the applicant's daughter; copies of school records for the applicant's younger son; a copy of the title to a vehicle owned by the applicant's spouse; copies of tax documents for the couple and letters of support.

The record also contains copies of court and police documents evidencing the applicant's criminal record; two affidavits of the applicant's spouse, dated May 19, 2003; additional letters of support; evidence of the purchase of a home by the applicant and his wife and verification of the employment of the applicant and his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

....

(ii) [A]ny alien . . . who-

(I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.

....

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign

contiguous territory, the Attorney General [Secretary] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the applicant's marriage to a U.S. citizen; his paternity of three legal permanent resident and U.S. citizen children and the applicant's clean criminal history of the past 12 years.

The unfavorable factors in the application include the applicant's four arrests and convictions for Driving While Intoxicated (1986, 1988, 1989, 1991); his illegal entry into the United States; the applicant's removal from the United States at government expense in 1992 and the applicant's subsequent reentry into the United States without permission. The AAO notes that the applicant's reentry without permission may render him subject to reinstatement of his previous removal order. If the applicant were found subject to reinstatement provisions under section 241(a)(5) of the Act, the applicant would be ineligible and could not apply for any relief under the Act. Further, the applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country. While the applicant has maintained a clear criminal history since his last arrest in 1991, the applicant has continued to disregard the immigration laws of the United States by remaining in the country illegally and reentering the United States virtually immediately after being removed in 1992.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The interim district director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.